IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5557 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GORDHANBHAI VRANDAVANBHAI PATEL SINCE DECEASED THROUGH HEIRS
Versus
HEIRS OF KOLI KADVABHAI B

Appearance:
MR JITENDRA M PATEL for Petitioners No. 1-1/3
MR Shital R Patel with
MR AJ PATEL for Respondents No. 1-1/5
MS KATHA GAJJAR AGP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT
Date of decision: 04/02/2002

ORAL JUDGEMENT

Heard the learned advocates.

Pending this petition, the petitioner-Gordhanbhai

Vrandavanbhai Patel, has passed away and his heirs and legal representatives ie., petitioners nos. 1/1 to 1/5 have been substituted. The deceased-petitioner no. 1 before this Court was purchaser of the land bearing Survey No. 118 admeasuring 2 Acres-32 Gunthas of village Bharwada, Taluka-Naswadi, District-Vadodara. The said land was purchased by the petitioner on 15th June, 1971 from the respondent no. 1 herein. The Revenue entry no. 318 evidencing the said transfer was made in the village records on 15th June, 1971 and was certified on 13th March, 1972. It appears that the Deputy Collector, Vadodara was of the opinion that in the area in question, survey settlement as envisaged in Chapter VIII-A of the Bombay Land Revenue Code [hereinafter referred to as, `the Code'] was not made and in view of the Government Notification dated 4th April, 1961, any transfer of land from Tribal to Non-Tribal was prohibited under Section 73A of the Act. He was of the further opinion that the transferor - one Koli Kadvabhai Bapubhai belonged to Scheduled Tribe viz., `Rathwa community'. The Deputy Collector, therefore, under his order dated 31st May, 1977 was pleased to hold that the sale in favour of the petitioner was contrary to the provisions of Section 73-A of the Code. He, therefore, ordered eviction of the petitioner and for restoration of the land to the transferor. Feeling aggrieved, the petitioner preferred appeal before the Collector, Vadodara, who was, under his order dated 6th March, 1978, pleased to allow the said appeal partly and remand the matter to the authority below to determine whether the transferor belonged to the Scheduled Tribe or not. Since the said order of remand, the Deputy Collector, Dabhoi has, under his order dated 31st August, 1978, held that the transferor belonged to the Scheduled Tribe and that the said transfer was in violation of Section 73-A of the Code. He, therefore, ordered restoration of the land to the transferor. The said order was challenged before the District Collector, Vadodara in Appeal No. 67 of 1978. The said appeal was dismissed by the District Collector, Vadodara on 9th April, 1982. The said order of 9th April, 1982 has been confirmed by the State Government [Additional Chief Secretary (Appeals), Revenue Department] under its order dated 14th June, 1990. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Patel has submitted that in the area of Naswadi, the Survey Settlement was introduced as far back as in the year 1959. Since the Survey Settlement was introduced, the Government Notification dated 4th April, 1961 and the bar under Section 73A of the Code would not apply to the transfer in question. He has also relied

upon the School Leaving Certificate and other documents pointing out that the transferor was a Hindu Koli and not of Rathwa community, as was made out by him. If the transferor was a Hindu Koli, he cannot be said to be a Scheduled Tribe person and in that case also, the bar under section 73-A of the Code would not be attracted.

On perusal of the papers, it appears that the petitioner had not produced the said documents before the authority below i.e., the Deputy Collector, Dabhoi. However, the same have been produced before the State Government. Nonetheless, the State Government has failed to consider the said documents. Moreover, whether the Survey Settlement was introduced in the area in the year 1959 or at any other time is nebulous, there is no categorical finding that in the area, the Survey Settlement under the Chapter VIII-A of the Code was introduced /was not introduced. It further appears that the District Collector, Vadodara under his order of remand dated 6th March, 1970 had recorded a finding that in the year in question, the survey settlement was not introduced in accordance with Chapter VIII-A of the Code. Be it noted that the said order is not produced before this Court by either of the parties. Thus, both the matters at issue - one whether the Survey Settlement as envisaged under Chapter VIII-A of the Bombay Land Revenue Code was introduced in the area in question and whether the prohibition under Section 73-A of the Code is attracted or not; and second, whether the transferor belonged to Scheduled Tribe or not are in flux. In that view of the matter, in the interest of justice, the matter requires to be remanded to the authority below.

The petition is, therefore, allowed. The order dated 14th June, 1990 made by the State Government in Revision Application No. 8 of 1987 and the order dated 9th April, 1982 of the District Collector, Vadodara in Appeal No. 67 of 1978 and the order dated 31st August, 1978 made by the Deputy Collector, Dabhoi in case No. 4 of 1977 are quashed and set-aside. The matter is remanded to the Deputy Collector, Dabhoi for decision afresh. It is clarified that the Deputy Collector shall grant opportunity of leading further evidence to both the parties i.e., the transferor and the transferee. It is further clarified that the Deputy Collector shall consider all the evidence that is/may be produced by either of the parties and shall give a clear finding whether transferor belonged to Scheduled Tribe, as contended by him, and whether in the area in question the Survey Settlement, as envisaged in Chapter VIII-A of the Bombay Land Revenue Code was introduced or not. It is

further directed that the Deputy Collector shall record his finding with respect to the introduction of the survey settlement based on the Government records including the evidence that may be produced by the parties. In other words, the Deputy Collector shall not solely rely upon the evidence that may be produced by the parties but shall make independent inquiries from the Government records. Rule is made absolute in the above terms. There shall be no order as to costs.

[Ms. R.M Doshit, J.]

Prakash*